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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-394

STATE OF FLORIDA on the relation of AUSTIN LLOYD and RUBY LLOYD, his wife,

Petitioners,

-vs-

THE CITY OF FORT PIERCE, a municipal corporation,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent, pursuant to Rule 24 of the Rules of the Supreme Court of the United States, 1971, prays that this Court deny Petitioner's Petition for

Writ of Certiorari to the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida based on the following:

1. That there is no statement of grounds on which this Court's jurisdiction is invoked by Petitioners. (Rule 23, Section 1 (b), Rules of the Supreme Court of the United States, 1971.)

2. That no statutory provision is cited which confers jurisdiction on this Court to review the judgment or decree in question by Writ of Certiorari. (Rule 23, Section 1 (b)-(iii), Rules of the Supreme Court of the United States, 1971.)

3. That there are no cites of

the constitutional provisions involved. These are required to be cited verbatim with the volume and page where found in the official edition. (Rule 23, Section 1(d) Rules of the Supreme Court of the United States, 1971.)

4. That Petitioner fails to show at what stage in the proceedings in the Court of the first instance, and in the appellate court, the federal question sought to be reviewed was raised. Petitioner has failed to show in what manner any federal question was raised as required. Petitioner, in fact, has failed to show in his Petition that <u>any federal question</u> was timely and properly raised so as to give this court jurisdiction to review

the judgment on Writ of Certiorari. (Rule 23, Section 1(f) Rules of the Supreme Court of the United States, 1971.)

5. That Petitioner has failed to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration as required by Rule 23, Section 4, Rules of the Supreme Court of the United States.)

6. That rather than a jurisdictional brief, as a Petition for Certiorari is, Petitioner has tried to argue the merits of his case without a showing that this Court has jurisdiction. Rule 41, Section 1, of the Rules

of the Supreme Court of the United States shows that "appellant or petitioner shall file with the Clerk forty (40) copies of his printed brief on the merits, within forty-five days of the order noting or postponing probable jurisdiction or of the order granting the Writ of Certiorari." (emphasis supplied) Because jurisdiction itself is at issue, Petitioner is premature in arguing any merits his case might have.

Here, Petitioner has tried to argue his cause on the merits in a jurisdictional brief. Under the guise of "facts", Petitioner has given arguments and conclusions of law none of which has any place in a brief of a jurisdictional nature and certainly has

nothing whatsoever to do with this Court's power to review the final judgment in question.

7. That in the event Petitioner's arguments to the merits were considered, he has wholly failed to distinguish between buildings built as private residences and those built as commercial establishments open to the public. There is a greater danger of public injury due to faulty construction in a public building (such as Petitioner's flower shop) for the simple reason that more people have access to public buildings. One way the public can be protected is to require that a person constructing a public building or making structural

repairs to such a building, be a qualified builder. A builder's qualification is determined by examination and licensing. It would be absurd to say that every land owner is a qualified builder. If every land owner were allowed to do his own construction of buildings which are open to the public, the results could be disastrous. It is true that the ordinance makes an exception as to residences not intended for sale. Since a private residence is not normally open to the public, the potential danger to the public at large is not as great.

The lesser public danger in residential construction justifies the distinction made by the ordinance.

In summary, Respondent respectfully contends that Petitioner has shown no basis for this Court's jurisdiction in the above styled cause; that such a showing is required by Rule 23 of the Rules of the Supreme Court of the United States, 1971 as cited above; that even if Petitioner's arguments to the merits were considered they are ill founded in fact and law and, therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Charles R. P. Brown,
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CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing Respondent's Brief in Opposition To Petition For Writ of Certiorari was furnished to Hon. Philip G. Nourse, Attorney for Petitioners, 133-A North 4th Street, Fort Pierce, Florida, 33450 and to Hon. Roger Poitras, Clerk of the Circuit Court, St. Lucie County Court House, Fort Pierce, Florida, 33450; and to Hon. Evelyn R. Flack, Clerk of the Fourth District Court of Appeals, P. O. Box A, West Palm Beach, Florida, 33402, and to the Hon. Sid J. White, Clerk of the Supreme Court of the State of Florida, Supreme Court Building,

Tallahassee, Florida, 32304, by mail on this the 20th. day of October, A. D. 1971.

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